DBS, and other non-broadcast video delivery modes does not depend on their adoption by all or even most television households. Cable television is available to nearly all television households. DBS is available to nearly all television households. SMATV and MMDS are available to many more households than currently subscribe. It is the availability of these alternative video program providers that is relevant:

> "If the quality of broadcast television programming available to the viewers in a community were to decrease significantly, each of these [services] provides programming that is [available as] an alternative to broadcast television. It is the presence of these alternative delivery systems and their ability rapidly to take dissatisfied viewers away from broadcast television that is important, not their present scale of operation."

Owen Study at 11.

After examining several illustrative DMAs, the Owen Study concludes that its analysis "suggests that concentration among video suppliers tends to be lower still if data were available for all the market participants. No single firm is likely to have significant market power, nor is the collective exercise of market power likely in the supply of video programming to viewers." Id. at 17. Applying these conclusions to its analysis of the local ownership rule, the Owen Study notes that the viewer share of broadcast stations is likely to decline over time as alternative video delivery systems increase in popularity. Even with current viewer shares, however, the Owen Study found "many instances" in which common ownership of stations with overlapping Grade B contours could occur without raising significant competitive concerns. Id. at 87-88. Moreover, the Owen Study concluded, even relaxing the restriction to a prohibited Grade A contour overlap would be too restrictive, because:

> "In DMAs where there is now vigorous competition among many television stations, cable operators and other providers, joint ownership of stations could

> occur without reaching levels of concentration that would raise competitive concerns."

Id. at 88. The Owen Study's analysis of the effect that modification of the local ownership rule would have on competition in the market for delivered video programming is therefore consistent with the results of the NERA Study's analysis of the advertising market and thus fully supports LSOC's proposals.

2. The Advertising Market

In its Comments and the accompanying NERA Study, LSOC demonstrated that the relevant product market for purposes of the local ownership rule is the local advertising market, which in most cases will be the DMA. The local advertising market is the market that clearly drives the stations' competitive behavior, since commercial television stations earn income almost exclusively from advertising sales. All advertising media create a product -- an audience -- that is marketed to advertisers. The production and delivery of video programming, whether news or entertainment, are only the means by which stations "produce" the audience that they in turn "sell" to advertisers, in the same way that other non-media firms assemble various inputs to create a product that is sold to their ultimate customers.

The NERA Study demonstrated that broadcast television stations compete, as suppliers of advertising time, for the patronage of local, regional, and national advertisers. The NERA Study showed that there is available qualitative information to suggest that television broadcast stations compete directly against newspapers, cable, direct mail marketing, radio, outdoor (billboards), and magazines. Other economic analyses submitted in this proceeding reached similar conclusions.

In its analysis of the effect of modification of the local ownership rule on competition in the advertising market, the Owen Study presented evidence that television stations do not significantly compete in the sale of advertising with television stations located outside the DMA and that, therefore, the Commission's current local ownership rule prohibiting common ownership of stations with overlapping Grade B contours is excessively restrictive with respect to competition in the sale of advertising. The Owen Study also presented considerable evidence, consistent with the NERA Study, that the advertising market in which television broadcast stations compete includes cable television and other media such as radio, newspaper, direct mail, yellow pages, and outdoor advertising. Owen Study at 89. The Owen Study concluded that, even in smaller markets, concentration measured using either local advertising sales or total advertising sales is low. Thus, within many markets common ownership of television stations would not increase concentration in the sale of advertising to levels that warrant competitive concern. Id. Obviously this conclusion is consistent with the results reached in the NERA Study and similarly supports LSOC's proposals. Moreover, no evidence and no studies were submitted to demonstrate or even suggest a contrary result.

3. The Video Program Production Market.

In its Comments, LSOC addressed the Commission's concern that the local program production market could be affected if Commission relaxation of the local ownership rule permitted one or a few broadcast station owners to exercise significant market power in the purchase of video programming. As an initial matter, LSOC noted that the Commission does not have the jurisdiction, responsibility, or authority to be concerned about the local market for program production. LSOC also pointed out that, given the number of outlets available, permitting television licensees to own two stations in their market would not give a licensee in any given market sufficient market power to affect significantly the local program production market, or any of the various factors of production, i.e., labor, equipment, video programming, or other inputs to video programming. LSOC also observed that local stations compete with national broadcast groups and cable services for syndicated programming and that having one or two stations in one local market would not give a local station owner sufficient market power to outbid a larger group owner (or an alternative multichannel video service provider) who has more markets to offer the programmer and whose own objective is to have its programming distributed as widely as possible. Thus, LSOC concluded that amending the local ownership rule for television would have little if any impact on the local video program production market.

The Owen Study approached its analysis of competition in this market differently, noting that this is an area heavily influenced by other Commission rules, such as rules that place specific limits on the geographic area in which a broadcast station can enforce exclusive exhibition rights for non-network programming. Owen Study at 89. The Owen Study also notes that the current rule (and even a modification to a Grade A standard) clearly prohibits joint ownership of stations that do not compete in acquiring non-network programming. Id. The Owen Study also noted that the current rule is also ill-suited to protect competition among stations to affiliate with broadcast networks. Id. The Owen Study concludes with a recommendation that an analysis of competition in the purchasing of programming would be preferable to a blanket rule. Id.

III. TIME BROKERAGE/LOCAL MARKETING AGREEMENTS

As noted above, the majority of Commenters agreed with the LSOC that television LMAs serve the public interest and should be permitted to continue even if the Commission does not relax its local ownership rules. A few Commenters oppose a Commission decision to permit LMAs in television. Those few Commenters offer no specific analysis to support their position and instead offer generalizations and speculation about LMAs in general that reflect a lack of knowledge about the use of LMAs in the industry.

Most disturbing to LSOC is a wild claim made by the Television Operators Caucus ("TOC") in a letter to FCC Chairman Reed Hundt, filed in this proceeding as "Comments" on May 17, 1995. The TOC states in its letter, at page 3, that it opposes LMAs, contending without any support, analysis, documentation, or examples that "in all material economic ways they function as *de facto* waivers of the duopoly rules." The TOC rashly alleges further that "actions are being taken which may be very harmful to the public, and they are effectively being undertaken outside of any Commission oversight or direct knowledge." Id.

Obviously, LMAs are not *de facto* waivers of the duopoly rules, since the licensee of the brokered station must always maintain ownership and control over its facilities. Moreover, as explained in the comments of Sinclair Broadcast Group:

> "[t]elevision LMAs differ from radio LMAs in a very fundamental respect. Unlike the customary radio LMA, which involves one station simulcasting the majority of its broadcast day over a second station in the market, television LMAs do not ordinarily involve significant amounts of common or simulcast programming. In the customary television LMA, the broker purchases and provides to the brokeree, usually in exchange for a monthly fee, an entirely separate inventory of programming. Indeed, in the markets where Sinclair has LMAs, the Sinclair

owned-and operated station is the market Fox affiliate -- whereas the stations being programmed by Sinclair are affiliated with another network (in most cases, the emerging United Paramount ("UPN") or Warner Brothers network), and have completely different slates of syndicated entertainment programming. Thus, it is critical for the Commission to realize that, in contrast to many radio LMAs, stations involved in most television LMAs are very much distinct in their images and their program offerings. At the same time, however, Sinclair's LMAs have allowed Sinclair to bring its production resources and community service commitment to bear on the brokered station by producing local issue-responsive programming for broadcast on either one or both stations -- therefore expanding the potential outlets for, and reach of, such programming."

Sinclair Comments at 3 (emphasis in original).

The record in this proceeding contains numerous examples of LMAs that have resulted in greater options for viewers, advertisers, and programmers, while increasing the quality and quantity of programming geared to local concerns and interests. LMAs have helped to save failing stations and to enable new entrants, including women and minorities, to put their stations on the air when it appears they would otherwise be unable or unlikely to do so.

The Commission has ample investigative and enforcement authority, complaint procedures, and precedent to act if particular circumstances are brought to its attention to indicate that a possible unauthorized transfer of control has occurred. LSOC has proposed, as have most commenters in this proceeding, that television LMA agreements should be filed at the FCC, placed in the local public inspection files, and disclosed in ownership reports (with confidential and proprietary information redacted). If the Commission adopts LSOC's proposals, the TOC's articulated concerns that actions are being undertaken outside of any oversight or direct knowledge of the Commission will be addressed in a way that will not prevent the public from receiving the benefits of LMAs but will protect against potential abuses.

IV. CONCLUSION

As LSOC and other commenters have demonstrated, the ownership restrictions placed on television broadcasters were developed in response to industry, market, and technological conditions that no longer exist. The existing rules no longer serve the purposes for which they were established and may even thwart those purposes by preventing broadcasters from effectively competing against their competitors.

The Commission should let marketplace conditions prevail. Given the volume of diverse viewpoints and the level of competition facing commercial broadcast television today, the public interest standard, marketplace conditions, antitrust laws and other state and local regulations offer sufficient limitations on the ownership and operation of television stations to ensure that the Commission's goals of competition and diversity will be protected and fostered. LSOC's proposals set forth in its Comments should therefore be adopted.

Respectfully submitted,

THE LOCAL STATION OWNERSHIP COALITION

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